

Service Date: August 16, 1988

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER of the Application of )	TRANSPORTATION DIVISION
Montana Rail Link, Inc., Missoula, )	
Montana, to Discontinue its Agency )	DOCKET NO. T-9187
Operations at Darby, Montana and to )	
Dispose of the Depot Facilities. )	ORDER NO. 5867

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FINAL ORDER

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APPEARANCES

FOR THE APPLICANT:

Edward A. Murphy, Datsopoulos, MacDonald & Lind, 201 West  
Main, Missoula, Montana 59802

FOR THE MONTANA CONSUMER COUNSEL:

Mary Wright, Staff Attorney, 34 West Sixth Avenue, Helena,  
Montana 59620

FOR THE COMMISSION:

Timothy R. Baker, Staff Attorney, 2701 Prospect Avenue,  
Helena, Montana 59620-2601

BEFORE:

JOHN DRISCOLL, Commissioner and Hearing Examiner  
HOWARD L. ELLIS, Commissioner  
DANNY OBERG, Commissioner

BACKGROUND

On January 26, 1988, Montana Rail Link, Inc. (MRL or Applicant), of Missoula, Montana, filed an application with the Montana Public Service Commission (Commission) seeking authority to discontinue its agency operations at Darby, Montana, and dispose of the depot.

On March 2, 1988, the Commission sent the following letter to Montana Rail Link:

Please be advised that the Commission has reviewed the applications filed by Montana Rail Link in the above-referenced matters. The first two hearings will be on the Darby and Hamilton closures, March 29 and 30, respectively.

Traditionally, as you know, the Commission has applied a balancing test in judging the Public Convenience and Necessity with regards to Burlington Northern closures. Typically, this involves the weighing of net profits or losses against the needs of the affected shippers. If a station is profitable, less shipper need is required to keep the station open. Conversely, if the station is losing money, more shipper need must be demonstrated.

It is believed that the fundamental concepts involved in determining Public Convenience and Necessity, as briefly outlined above, will not be different for the MRL applications. However, the Commission does see

a need to become more familiar with the total operations of MRL in order to assure itself that minor variations in the analysis are not required to fit the balancing test to the MRL system. Rather than open a separate investigation, the Commission believes that it can fulfill its need for a better understanding of MRL at the first few station closure hearings.

Accordingly, at the opening hearing in Darby, the Commission requests that MRL provide testimony from company witnesses relating to the overall operations of the MRL system.

This would include specifically, but not be limited to, an extensive and detailed review of the dispatching and customer services and operations. In this regard, perhaps a step-by-step discussion of how services are provided when a car order is placed, et cetera, would be appropriate.

I also note that you have not provided revenue figures for each station sought to be closed. As you can see from the PC&N analysis that we use in judging applications, the revenue per station is an important consideration, since the profitability of the station determines the level of shipper need that will allow a station to close. Of course, if MRL will acknowledge on the record that each station is profitable, then this problem may be resolved, as the Commission will apply the higher standard, where the burden is left with MRL. Of course, if MRL wishes to raise opportunity cost arguments, such as described in your letter of February 8, 1988, to Wayne Budt, then revenue figures may be essential for the Commission to consider the applications.

The Commission also requests that any documents or exhibits MRL would generate from this letter for presentation at the Darby hearing be supplied to the Commission staff to review by March 22, 1988.

Finally, at each hearing on the applications, MRL witnesses should be prepared to respond to shipper and community interests regarding the role that the local agent may play in rail safety in and around the affected community.

The Commission appreciates your assistance in this matter. If you have any questions, please contact Tim Baker or Wayne Budt.  
Sincerely, Clyde Jarvis, Chairman.

Following issuance of proper notice, the Commission conducted a public hearing on March 29, 1988, at 107 West Missoula Avenue, Darby, Montana. The hearing was conducted by a quorum of Commissioners.

#### SUMMARY OF TESTIMONY

##### Testimony of Applicant

Mr. Gary G. Widle, appeared and testified in support of the application. Mr. Widle is the Vice-President of operations for the Applicant, and resides in Missoula, Montana. Mr. Widle sponsored the following exhibits:

Exhibit D: Montana Rail Link Brochure, including a map of the MRL system.

Exhibit E: A chart showing the frequency/severity ratio for nine class I railroads, as established by the Association of American Railroads. The document also shows a comparative figure established for MRL, and reflects a comparison of the train derailment ratio for MRL and BN.

Mr. Widle offered a general description of the Applicant's operations. The MRL track runs from Huntley, Montana to Sandpoint, Idaho. It includes 585 miles of main track plus approximately 283 miles of branch lines. The branch lines extend from Missoula to Polson and Darby, to Logan, Whitehall and Alder, from Helena to Montana City, and Drummond to Philipsburg. MRL has also acquired the trackage rights on the Burlington Northern from Helena to Phosphate and from Sandpoint to Spokane, which makes the total main line operation from Huntley, Montana, to Spokane, Washington, approximately 635 miles. In addition, the Burlington Northern has accepted trackage rights on MRL trackage from Laurel, Montana to Huntley, Montana.

The President of MRL reports directly to the Washington Corporation Board of Directors. Mr. Widle reports to the MRL president, and is directly responsible for all train operations, car distribution, mechanical operations, maintenance of track and property, and the safety and accident prevention programs.

The MRL crew districts were changed from the four crew districts of the Burlington Northern to three crew districts. MRL crews board a train at Laurel, Montana, and the crew operates all the way to Helena, Montana, a distance of 220 miles. MRL puts a

second crew on at Helena, Montana, and they run into Missoula, a distance of 118 miles. The third district runs from Missoula, Montana, to Spokane, Washington, a distance of 286 miles. Maximum speed on the Montana Rail Link is 60 miles an hour, as it was on the Burlington Northern. The MRL crews are subject to the Hours of Service law. The crew size of an MRL train is two engineers. MRL does not normally put anybody on the rear of the train. MRL operates across a territory that is protected approximately every 30 miles by failed equipment detectors. There are six of them between Laurel and Helena, three between Helena and Missoula, seven between Missoula and Sandpoint, and on the Burlington Northern trackage there are two between Sandpoint and Spokane.

The Montana Rail Link is unionized. The Brotherhood of Locomotive Engineers represents all operating crafts. The Rail Labor Executive Association represents all nonoperating crafts. MRL employs 751 employees, which breaks down to 309 operating employees, 40 clerks, 123 mechanical, 178 maintenance of track and property, 66 employees in the centralized office in Missoula, and 20 operating officers.

Initially, MRL acquired 52 engines, including 20 high-horsepower engines, 24 low-horsepower engines and 8 switch engines.

MRL has also purchased two GP35's (a four-axle engine that

operates generally as a low-horsepower engine), and seven SD9's (to be used in hopper service around Helena and Livingston).

MRL acquired 100 chip cars, 30 gondola cars, 150 covered hoppers and 283 various boxcars; for a total of 563 cars. In addition to that, MRL has purchased 40 log cars and is currently building 10 others, which will be available within six weeks. MRL has also purchased and leased 200 100-ton, 3,000 cubic foot cars for hauling phosphate.

Presently, the MRL dispatching is done on a contract basis with the Burlington Northern by Burlington Northern dispatchers headquartered in Billings. MRL pays them salary plus a fee to handle their trains. MRL has a contract with the General Railway Signalling Company, to build a state-of-the-art technology dispatching center in Missoula. MRL has employed 15 dispatchers to handle the MRL territory.

Presently MRL operates four Burlington Northern trains per day in each direction on a bridge basis. Cars are interchanged at Laurel, and MRL carries the train to Spokane, Washington. In addition to these trains, MRL also handles a considerable number of coal trains and grain trains. Recently, and over all, the total traffic on MRL's system has been as high as 32 trains in and out of Missoula in one day. According to Mr. Widle, this is a high

density operation.

Mr. Widle also described the contents of Exhibit E. It contains standardized figures acquired from the Association of American Railroads relating to both personal injuries and reportable train accidents, as defined by the Federal Railroad Administration. Personal injuries are measured by a frequency/severity ratio, the frequency being how often an employee is injured, and the severity being the number of days of work that the individual loses. Every railroad in the country is measured the same way. For the first nine places, the best Class I railroad in the country was the Southern Pacific with a 4.22 frequency/severity ratio. The Burlington Northern was ninth with a frequency/severity ratio of 7.53 for the month of January. During the same month, the MRL frequency/severity ratio was 0.16. Train accidents are also measured by a standard formula, which is the number of reportable incidents multiplied by one million and divided by the number of train miles. For January-February, the Burlington Northern figure was 3.63, while the MRL ratio was 1.91.

Mr. Widle stated the Applicant's policy concerning the branch lines which were acquired from the Burlington Northern. The Applicant views the branch lines as a source of growth which they expect to expand and provide more and better service. Mr. Widle



stated that MRL is presently attempting to obtain new customers along the Darby branch line. The Applicant is able to fulfill its policy regarding the Darby branch line without an active agent in either Darby or Hamilton.

On cross, Mr. Widle described the use of dispatching on the Darby branch line. The line is governed by operating Rule No. 5225, which requires the crew of a train moving on the Darby branch to sign in on a register. No other trains are allowed on the branch line until that crew signs out.

Mr. Orson Murray, appeared and testified in support of the application. Mr. Murray is the Manager, Operations Specialist, in the operations department. Mr. Murray is responsible for the administrative aspects of the railroad as they interrelate to operations, which includes the oversight of agency operations. Mr. Murray sponsored the following exhibits:

Exhibit F: A document describing step-by-step customer instructions for using the Montana Rail Link system. These instructions are distributed by the Applicant through its marketing department, located at the centralized agency in Missoula.

Exhibit G: A document providing instructions to temporary agents describing the duties and responsibilities of their positions. These documents were distributed to the agents at the various agencies as they were hired.

Exhibit H: A document which is a compilation of information concerning the number of cars shipped, the type of commodity, and the amounts shipped per month, for the years 1985, 1986, 1987, and the first two months of 1988.

Mr. Murray offered a general description of agency functions on the MRL system, beginning with a step-by-step analysis of how a car is ordered and delivered by MRL. A shipment usually begins with placement of a car order, and the car order is given to the car distributor who finds a car suitable for the shipment of the commodity to the proper destination. Most shippers are repetitive shippers and have patterns of operations. Cars are assigned for those movements either through pools or assignments.

The random individual shipper is given special attention because they need to understand the loading requirements, the release requirements, and other aspects of the car movement.

Once the car order has been placed, a car is found to fill the order and is moved to destination for loading. After the car has been loaded, the shipper furnishes forwarding instructions in the form of a bill of lading. The bill of lading may be tendered directly, or it can be phoned in to MRL's computerized billing center.

When the car has been released on forwarding instructions, the bill of lading goes to the computerized billing center

and over to the yard management center where it is released to the computer. This informs people in the field who are dealing with the car that it now has a destination on it. It has been changed from an "empty" to a "load." The bill of lading then goes back to the computerized billing center where it is an input to the computer for the billing process. When the bill of lading is entered into the Computerized Billings System (CBS) and crosses over into COMPAS (yard management) system, it overrides all further instructions that can be placed on that car until that car has either arrived at destination, which suppresses the way bill, or the way bill is "busted." A way bill can only be "busted" by the input station or through special arrangements with the operation data control centers at the Burlington Northern.

Incoming loads are placed on the appropriate siding, or at the shipper's place of business, for unloading. If it is a private track, MRL assumes that the shipper knows the car is placed. If it is other than private tracks, MRL notifies the shipper of the arrival of the car and the unloading process can begin. Once the shipper has removed the commodity, and advised MRL that the car is released, MRL will then change the status in the computer from "load" to "empty" and redestine the car to another place for further loading.

Car tracing is all done through the center in Missoula.

All cars are entered into the computer in the COMPAS (Complete Operating Management Process and Service) system. If MRL has the car number, they can locate that car at any point on the Burlington Northern system or on the MRL system. In some cases where there is overhead flow of data from other carriers, such as the Southern Pacific and the Union Pacific, MRL can find the car on those lines.

With the computerized systems, MRL can trace cars and develop related information in a matter of minutes.

Special requests and instructions that relate to shipments, such as over/short and damage reports, switching, weighing, or demurrage are referred to the car center in Missoula. In the case of over/short and damage reports, MRL will send someone out to inspect the lading, assist in making the claims, if so desired, and process them through the MRL system. Switching orders are passed to the terminal trainmaster and to the crews for handling. Each car is entitled to one weigh, usually at origin. This is automatic unless otherwise stated. If a shipper is tracing for weights, the weights are placed into the computer when the car is weighed and MRL can call up that information from the computer. Demurrage is handled by the Missoula center through the centralized agency system. Unusual occurrences that are observed on the railroad,

such as equipment failures, are reported to the Missoula center.

MRL maintains an 800 FAX number in the state and also a city number in Missoula which is available.

Referring to Exhibit G, Mr. Murray described the day-to-day activities of the agents on the MRL system. By the instructions given to them, agents are basically required to direct any customer inquiries to the Missoula center. According to Mr. Murray, the large majority of the shipper-related questions are directed straight to the Missoula center via a toll-free number, where they are processed. Very few calls are received at the Darby agency. The Darby agents have, as part of their duties, kept a log of incoming phone calls. Mr. Murray reviewed this log, and indicated that it reflected a total of six calls received by the Darby agency from December, 1987, through March 23, 1988. Only two of the six calls were from potential shippers. One call inquired into moving a less-than-car-load shipment. The other call concerned the possible shipment of ore from Challis, Idaho. This call was directed to the marketing department in Missoula, and was handled out of that office.

Mr. Murray testified that the Darby agency is actually located five or six blocks from the railroad tracks, on the second floor of a building off Main Street, in Darby. The original depot

is very old, and was judged to be unsafe. According to Mr. Murray, service to the shippers in Darby has not suffered because of the relocation of the agency.

Mr. Murray also described the derivation and significance of the numbers contained in Exhibit H. These figures are derived through the computer system on the basis of input at the centralized billing stations. This particular document was prepared on request of the MRL by the Burlington Northern statistical department. The first page shows shipments received and forwarded during 1985 to be a total of 440 cars of dressed lumber that were forwarded. The second sheet shows that in 1986, and for the same commodity, a total of 657 cars were forwarded. In 1987, 659 cars of dressed lumber, and one car of woodworking machinery, were forwarded. There were no cars received during any of these years.

The next page shows figures which were developed manually at Missoula for shipments forwarded from Darby during the months of January and February, 1988. There were 53 cars forwarded in January, and 48 cars forwarded in February. For March, the shipments seem to be generally consistent. The last page of Exhibit H shows that, on the basis of working days, the Darby Agency has produced approximately 2.64 cars per working day.

Mr. Murray testified that he was not aware of any prob-

lems for shippers which resulted from the adoption by MRL of a system whereby the agency function is actually handled in Missoula as opposed to Darby. Representatives of MRL routinely contact shippers to make sure that there are no problems. Mr. Murray added that since MRL has been in operation the local agent in Darby has not played any part in the shipments that are represented by Exhibit H, particularly those appearing in the last two months of 1987 and the first two months of 1988.

Mr. Murray indicated that he was formerly employed by Burlington Northern, and stated that MRL handled their customers much differently. MRL is much more customer oriented than the Burlington Northern. The operating personnel are invited and encouraged, down to the train crew level and the clerical forces, to work with shippers or potential shippers. Under the Burlington Northern system, the marketing department handled almost all of the calls. According to Mr. Murray, shippers seem to be very receptive to the MRL system.

On cross, Mr. Murray testified that MRL deemed the Darby agency to be profitable, meaning that MRL was deriving enough revenues from the Darby operations to receive a net profit without the expenses of having an agent. Mr. Murray added that it was MRL's belief that the agency would eventually be more profitable.

Despite the additional traffic which is anticipated, Mr. Murray stated that MRL believes that an agent is not necessary.

On cross, Mr. Murray testified that the current agents at the MRL stations are from a temporary employment agency and are employees of that agency, not MRL. MRL has contracted with a temporary employment company who has, in turn, provided employees to serve as station agents. The rail unions have challenged this arrangement, and it is considered to be a dispute under the Railway Labor Act. The TCU claims that these agents are subject to their agreement with MRL and are thus union employees.

Mr. Thomas Arthur Jones, appeared and testified in support of the application. Mr. Jones is the Trainmaster for MRL in the Missoula terminal (and lines west), and resides in Hamilton, Montana. The responsibilities of this position include the branch line serving Darby, Montana. As Trainmaster, Mr. Jones is the first line operating officer for the railroad, and is responsible for train and crew operations, safety, rule compliance, etc.

Mr. Jones offered both general background and a description of MRL's operations relating to the Darby branch line.

The Darby branch was a Burlington Northern branch line. The Burlington Northern operated the branch line with the local train.

This was a four- to five-man crew which was assigned to a standard



pattern of operation. In one day the crew would go to Darby and return to Missoula. The following four days of assignment, if it was a five-day assignment, the crew would run from Missoula to Polson, return the following day, back to Polson the next day and back to Missoula. It was a very structured operation. With MRL, and because of flexibility in the contractual agreements with the Brotherhood of Locomotive Engineers, MRL operates a three-man crew which is designated as a switch crew. Their regular assignment is out of Missoula five days a week, beginning Sunday at 7:00 a.m.

This crew operates to Darby on Mondays, arriving in Darby at approximately noon, and returning to Missoula the same day. This crew is not locked into a rigid schedule. Normally, the other four days this crew is used in the yard performing various switching duties. However, on at least four or five occasions, this crew has returned to Darby during the week at no additional expense to the railroad or the customer, to provide additional service.

The Darby line is 65 miles long, and it takes approximately 10 or 11 hours to operate. The present speed limitation on the branch is 25 miles an hour, but MRL is planning to upgrade the track from 30 to 35 miles an hour in the next few years. This track was neglected for a number of years under BN, and MRL intends

to bring the line back to good operating status.

The primary operation of the branch line is lumber moving out of the valley. Approximately 90 percent of the MRL revenue from Darby is derived from this movement, and 100 percent of that lumber originates at Darby from either Stoltz-Conner or Darby Lumber. There are also inbound shipments, including ore, corn, bran and fertilizer.

According to Mr. Jones, the agents in Darby do not perform any productive functions with respect to railroad operations.

Mr. Jones stated that the traditional agent's duties still include providing roll-by inspections of passing trains, but added that the Darby agent does not perform this function because of the location of the agency away from the tracks. In addition, and during the working hours of the agencies, which are daylight hours, there are other members of the MRL staff out working, including maintenance of way people, track inspectors, and bridge and building people, who are also required by the rules to give a roll-by. Accordingly, there is a certain amount of redundancy. Further, at any place on the track where trains pass each other, the crew which is waiting for the train to pass must give a roll-by inspection. In total, there are a number of visual inspections being made on a daily

basis.

Ms. Julie Marie Overholt, appeared and testified in support of the application. Ms. Overholt has served part-time as the Darby agent for MRL, and resides in Darby. Ms. Overholt testified that she received a few of the six total calls received at the Darby agency since December. She added that she was not aware of any other calls received at the Darby agency relating to MRL business. Ms. Overholt stated that, as the agent in Darby, she has not performed any duties or functions with respect to actual railroad operations. On cross, Ms. Overholt stated that when she was hired, she was instructed to direct all calls relating to MRL to an 800 number in Missoula.

Ms. Diane Marie Ring appeared and testified in support of the application. Ms. Ring is the other part-time MRL agent at the Darby station, and resides in Darby. Ms. Ring testified that she was not aware of any phone calls received at the Darby agency concerning MRL business, other than the six previously described.

Testimony of Protestants

Mr. James T. Mular appeared and testified in opposition to the application. Mr. Mular is the State Legislative Director of the Transportation/Communications Union (TCU), and resides in Butte, Montana. According to Mr. Mular, the Transportation/Communications Union has an existing labor agreement with the Applicant which covers the scope of services that a rail agent performs with MRL. The agreement provides for two clerical pay classifications. A class one clerical position is paid a D rate and is defined as having skills possessed by a secondary school graduate and performs clerical, mechanical, engineering and other work assigned, and assists technicians and journeymen. Class E is defined as possessing skills of a secondary school graduate, performing nonspecialized clerical and other work assigned. The resident agents in Darby fall within category E. However, MRL has subcontracted with Express Services, an employment agency located in Missoula, Montana, to render agency telephone services for the Applicant's patrons in Darby. Their wage is 3.35 an hour (minimum wage).

Mr. Mular stated that he believes MRL has not complied with Section 69-14-202, MCA, which requires a successor railroad through a purchase to maintain and staff station facilities in

Montana and to accept and receive freight by those agents. It wasn't until a show cause order was issued by the Commission that MRL provided the service under Montana law. According to Mr. Mular, Section 69-14-708, MCA, requires railroads to maintain records of accidents involving animals killed along the rights-of-way at a station located in the county where the railroad operates, by filing the station locality with the county clerk and recorder.

Such filing must assure that a station agency maintains a book record of such accidents. Mr. Mular added that the productivity figures sponsored by the Applicant are misleading, since the alternative is to send personnel to Darby from Missoula, a distance one-way of 64 miles.

Mr. Mular noted that MRL alleges that the relief requested in this application is an effort to reduce the cost of transportation services. He asked whether or not the cost savings will pass on to the customer or be used by the Applicant for rehabilitation of the Darby branch line. Mr. Mular also added that the Applicant pleads opportunity cost savings without substantiating any impact of closure on profitability and savings.

Mr. Mular questioned the accuracy of the Applicant's safety comparisons shown in Exhibit E. He believes that the

methodology used by MRL in computing these numbers does not accurately reflect the mileage differences between the Applicant and BN. Further, and with respect to Exhibit G, Mr. Mular contends that these instructions flagrantly evade Montana law, as they are instructing agents who are not employees of the railroad not to do business as the traditional agent does at such localities. Finally, Mr. Mular described the contents of Exhibit F as "a discouraging form of noncontact in the communities where MRL actually operates" which prevents contact between shippers and agents.

Mr. Rick Van Acken appeared and testified in opposition to the application. Mr. Van Acken is the legislative representative for the Railway Clerks, Lodge 43, now the Transportation/Communications Union, from Missoula. Mr. Van Acken offered testimony in response to the testimony of Applicant's witnesses. He stated that the BN clerks did not take employment with the Applicant, because MRL did not seek to hire them. In support of this statement, Mr. Van Acken sponsored the following exhibit:

Exhibit A: A letter from Mr. Dan Weer, the former Darby agent for BN, stating that he had absolutely no contact with MRL officials prior to the sale and that the position of station agent at Darby was never offered to him by MRL.

Mr. Van Acken questioned whether any of the present

clerks with MRL had received any training in handling demurrage problems, since in his opinion the computerized system used by MRL would not be infallible. He also disputed the Applicant's claim that a central agency can perform all of the functions of an outlying agency, adding that, by his calculations, the revenue derived from the traffic at Darby was more than sufficient to cover an agent's salary.

Mr. Van Acken also questioned the Applicant's testimony concerning the safety of operations on the Darby branch. According to Mr. Van Acken, there are no hot box detectors on this line, or other trains to perform roll-by inspections. If MRL is going to increase the number of trains on this line, as well as the speed of these trains, then the importance of safety will increase dramatically. Certainly, the number of problems such as right-of-way fires will increase. He added that it was common for the BN crews working the Darby branch line to have "near accidents" at crossings, as people in the valley were not accustomed to looking for trains because of their infrequency. A resident agent can help solve this problem by reminding local residents of the train schedules.

Testimony of Shippers

Mr. Leander Converse, Darby, Montana, appeared and testified in support of the application. Mr. Converse is the sales manager and plant superintendent for Darby Lumber, one of the two major shippers on the Darby branch line. Mr. Converse stated that Darby Lumber has received very good service from MRL as far as car availability, and management appearance. With car availability, MRL has done very well, as less lead time is needed to acquire, for instance, a speciality car. The MRL system seems to be working well at handling any problems with cars or other services. If necessary, MRL will run an extra train to bring a car down.

Mr. Converse stated that since MRL commenced operations, he has only contacted the Darby agency on one occasion, and was referred to Missoula. Since then, Mr. Converse has dealt only with Missoula, and he added that he has received good service. According to Mr. Converse, prior to MRL commencing operations, the shipping arrangements for Darby Lumber were made with the Darby agency.

Mr. Remmington Kohrt, Darby, Montana, appeared and testified in support of the application. Mr. Kohrt is the manager of the Stoltze-Conner Lumber Company in Darby. Stoltze-Conner is



the other large shipper on the Darby branch line. According to Mr. Kohrt, MRL has generally provided good service to Stoltze-Conner.

As far as the depot is concerned, Mr. Kohrt indicated that it "serves no earthly purpose." It is a fire hazard, an eyesore, and it is standing in the way of usable ground. Mr. Kohrt added that as far as the agent is concerned, they do not use the agent, and have never called the agent. The current agents here are of no value, as there is no service offered. The communication via telephone and through the personal contact with MRL employees is totally acceptable for conducting their business. Stoltze-Conner needs the rail service to remain competitive, as fifty-four percent of Stoltze-Conner's products were shipped on rail last year. Currently, there is a good, positive attitude between Stoltze-Conner and MRL. Mr. Kohrt fully expects this relationship to continue on into the future.

Public Testimony

Mr. Bernie Swift, Hamilton, Montana, appeared and testified in support of the application. Mr. Swift read a prepared statement, which was entered into the record as Exhibit B. Mr. Swift represents District 64 in the legislature and also appeared as a concerned citizen. He has been acquainted with the Darby branch line in Montana for a number of years, having worked in the area off and on for the last 20 years. His real concern is that the branch line in Darby be maintained for the service it is providing primarily to the lumber industry, some of the feed mills, and some amounts of fertilizer. Mr. Swift testified that he has talked recently with the users of the system and they have informed him that they are receiving good service. With MRL, there have been no difficulties in communication. In fact, communication has improved over the previous system where the agent/shipper relationship had existed.

The other important consideration, according to Mr. Swift, is that MRL plans to upgrade and improve the rail line itself into Darby. Mr. Swift stated that he wants to see the service continued the way it is being done now with the shippers on a good business basis, and with no problems. Above all, he wants to retain the branch line in the valley so that in the future there

can be an expansion of shipping for the benefit of the economy in the Bitterroot valley.

DISCUSSION, ANALYSIS AND FINDINGS

As a preliminary matter, and as indicated in the March 2, 1988, letter from the Commission to the Applicant, the Commission must first determine if the "public convenience and necessity" standard traditionally applied by the Commission is appropriate for MRL's operations. From a review of the Applicant's operations, the Commission does not see any reason to alter or vary this standard in judging MRL station closure applications, with one exception: MRL consistently refuses to provide data to the Commission concerning the profitability of its agencies. Accordingly, MRL should take note that in such cases where profitability data is not provided, the Commission will judge the application by imputing profitability to the station sought to be closed. Given the nature of the public convenience and necessity test, it is squarely MRL's burden to establish if an agency is not profitable. The same may be said for "opportunity cost" arguments, since there would be no basis to judge the claimed diversion of revenue to agency operations. If MRL desires to have an agency judged as "unprofitable," or wishes to raise "opportunity cost" arguments, financial data concerning the agency operations, similar to that provided by BN in past proceedings, must be provided.

This Petition to close the Darby agency is brought

pursuant to 69-14-202, MCA, as amended by the 1987 Montana legislature. That statute reads in its entirety as follows:

69-14-202. Duty to furnish shipping and passenger facilities. (1) Every person, corporation, or association operating a railroad in the state on January 1, 1987, or a successor thereto, shall maintain and staff facilities for shipment and delivery of freight and shall ship and deliver freight and accommodate passengers in such facilities as were maintained and staffed on January 1, 1987.

(2) However, if a person, corporation, or association operating a railroad demonstrates to the public service commission, following an opportunity for a public hearing in the community where the facility is situated, that a facility is not required for public convenience and necessity, the commission shall authorize the closure, consolidation, or centralization of the facility.

MRL's predecessor maintained an agency at Darby on January 1, 1987.

Therefore, the only question to be considered is whether "public convenience and necessity" require that MRL continue to maintain the agency.

The term "public convenience and necessity" is not a formulaic standard, but rather must be determined from the facts in each case; the existing burdens on the railroad will be weighed against burdens that will be placed on shippers should the application be granted. It has always been the practice of this

Commission that railroads should be allowed to practice economies when the benefits therefrom outweigh inconvenience and loss of service to the public. Mr. Murray stated that the Darby agency was profitable. In approving applications to close profitable agencies in the past, the Commission has noted that shipper testimony in such cases will be accorded great weight.

It is noteworthy that the application was not opposed by any shipper. In fact, the area's two largest shippers support the application. The only "uninterested" public witness also supported the application. Clearly, there is no evidence in this docket indicating that public convenience and necessity require the daily presence of a resident agent at Darby, Montana. On the contrary, the evidence shows that rail service to Darby shippers may be provided without the services of a local agent.

The only witnesses to testify in opposition to the application were Mr. Mular and Mr. Van Acken. They both contended that MRL was in possible violation of certain aspects of Montana law. The Commission finds nothing in the statutes referred to (specifically Sections 69-14-202 and 69-14-708, MCA) that would require the maintenance of a railroad agency in the absence of a finding of public convenience and necessity. On the contrary, Section 69-14-202(2), MCA, requires the Commission to authorize

closure of a railroad facility unless it finds from the evidence that public convenience and necessity requires the facility.

Section 69-14-708(1), MCA, requires a railroad to maintain records of stock losses at a designated place in each county through which it passes. If a railroad line runs through a county seat, then a place at the county seat must be designated for the maintenance of records on stock losses. The statute contemplates that some location in a county or county seat be designated for the maintenance of a record book, but that the location need not be limited to a particular railroad facility. The Commission does not interpret 69-14-708(1), MCA, as requiring that the railroad agent designated for keeping stock loss records be the same agent contemplated in 69-14-202, MCA.

Section 69-14-202, MCA, requires a railroad to maintain and staff facilities for the shipment and delivery of freight unless closure is authorized by the Commission. The Commission has always taken the position that the manner in which an agency is staffed is a railroad management decision that will vary with the needs of particular localities. The Commission has never defined specifically what the staffing of an agency requires, and will not do so now. The Commission does, of course, require some sort of staffing of agencies that have not been authorized to close; and

the Commission will entertain shipper complaints that the staffing in any given agency is inadequate.

There is nothing in the record of this case to support a conclusion that public convenience and necessity requires the maintenance of the Darby agency.

#### CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercises jurisdiction over the parties and matters in this proceeding pursuant to Montana Code Annotated, Title 69, Chapter 14.

2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter pursuant to Montana Code Annotated Title 2, Chapter 4.

3. No set rule can be used to determine whether or not the public convenience and necessity require a given service to be performed. The facts in each case must be separately considered and from those facts the question is to be determined. See Chicago, M. St. P. and P.R.G. v. Board of Railroad Commissioners, 126 Mont. 568, 225 P.2d 346 (1953), cert. denied 346 U.S. 823.

4. Public Convenience and Necessity does not require the maintenance of the agency at Darby, Montana.



ORDER

NOW THEREFORE IT IS ORDERED that Montana Rail Link's Petition to discontinue its agency and dispose of the depot facility at Darby, Montana is Granted.

IT IS FURTHER ORDERED that the Montana Rail Link Company shall apply 69-14-1001, MCA, as required.

IT IS FURTHER ORDERED that this Order be effective immediately and that a full, true and correct copy of this Order be mailed forthwith to the Applicant and all parties of record.

Done and Dated this 16th day of August, 1988 by a vote of

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BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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JOHN B. DRISCOLL, Commissioner

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HOWARD L. ELLIS, Commissioner

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DANNY OBERG, Commissioner

ATTEST:

Carol Frasier  
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.